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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2237/2013*, **, ***

Communication submitted by:	Christopher Alger (not represented by counsel)
Alleged victim:	The author
State party:	Australia
Date of communication:	30 January 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 15 March 2013 (not issued in document form)
Date of adoption of Views:	13 July 2017
Subject matter:	Compulsory voting in federal elections
Procedural issues:	Level of substantiation of claims; preclusion — *ratione materiae*
Substantive issues:	Right to privacy; freedom of thought, conscience and religion; freedom of expression; right to hold an opinion; right to take part in the conduct of public affairs and right to vote; right to equality before the law and equal protection of the law without discrimination; right to an effective remedy
Articles of the Covenant:	2, 17, 18, 19, 25, 26 and 50
Articles of the Optional Protocol:	2 and 3

1.1 The author of the communication is Christopher William Alger, a national of Australia born on 21 December 1965. He claims that the State party has violated his rights

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

*** An individual opinion by Committee member Ahmed Amin Fathalla (dissenting) is annexed to the present Views.

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under articles 2 (1), 17 and 18, read alone and in conjunction with articles 2 (2) and (3), 19, 26 and 50 of the Covenant. The Optional Protocol entered into force for Australia on 25 December 1991. The author is not represented by counsel

1.2 On 15 March 2013, the Committee, acting through its Special Rapporteur on new communications and interim measures, took note of the fact that the author was not represented by counsel and invited the parties to provide their observations and comments also in relation to article 25 of the Covenant.

Facts as submitted by the author

2.1 The author maintains that voting at federal elections is compulsory in the State party. According to subsection 245 of the Commonwealth Electoral Act 1918, it is the duty of every elector to vote at each election, other than in exceptional cases outlined in the Act. Electors who fail to vote are subject to a fine. Subsection 245 (14) of the Act states that: "Without limiting the circumstances that may constitute a valid and sufficient reason for not voting, the fact that an elector believes it to be part of his or her religious duty to abstain from voting constitutes a valid and sufficient reason for the failure of the elector to vote."

2.2 The author decided not to vote in the State party's federal election held on 21 August 2010. Subsequently, he received a notice informing him of his apparent failure to vote, which was issued by the Australian Electoral Commission. The Electoral Commission requested the author to provide the District Returning Officer with a valid and sufficient reason to justify his failure to vote. As an alternative, he could pay a fine or refer the matter to a court of law. In his reply to the Returning Officer, the author alleged that the then Prime Minister had made a series of promises to the electorate, but, once elected, he had declared that he would not implement "non-core promises". In the light of those unprecedented circumstances, the author realized that: he was not able to differentiate between core and non-core promises and what was true and what was false in the statements made by politicians during the election campaign; he did not have the means to independently verify and assess politicians' statements or promises; and, therefore, he did not have sufficient information available to make a meaningful decision on who to vote for.

2.3 On 24 November 2010, the Returning Officer issued a penalty notice for failure to vote and informed the author that the reasons provided by him were not valid and sufficient to be exempted from the duty to vote. Therefore, as a penalty, he was liable to a fine of 20 Australian dollars to be paid by 20 December 2010. The notice also informed him that, should he fail to pay the fine by the due date, the matter might be referred to a court and that it might result in a maximum penalty of $A 50, in addition to any court costs.

2.4 When the notice first came to the author's attention, he sought advice from the Returning Officer by telephone and also offered to provide a more detailed explanation about the reasons why he had abstained from voting. However, he was told that if the new reasons were similar to his original justification, they would still be deemed not to be valid and sufficient. He was also informed that had he given certain religious explanations to justify not voting, the matter would have been closed without a fine being imposed. Having been informed by the Returning Officer that the payment of the fine would not, in any way, be taken as an admission of liability, in December 2010, the author paid it to avoid the matter going to court and the likelihood of being convicted.

2.5 On 25 January 2011, he filed a submission before the Joint Standing Committee on Electoral Matters. He repeated the explanation that he gave to the Returning Officer, claiming that the enforcement of the Commonwealth Electoral Act entailed, in practice, an arbitrary interference with his right to privacy, since he had been requested to provide a written explanation of his reasons for not voting, even though his voting position — the details of his vote — should be considered private and at his discretion, including the reasons for not voting. It was also a discriminatory act on religious grounds, as had he claimed a religious reason for his apparent failure to vote then this would have been deemed to be a valid and sufficient reason by the Returning Officer. Therefore, his rights under articles 17, 18 and 26 of the Covenant had been violated. He further argued that although voting was compulsory, a voter could mark the whole ballot paper or not mark it at all, in which case no vote would, in practice, take place. In such a situation, no law would

be broken and the vote would be kept secret. In contrast, in his case, he was obliged to disclose his reasons for not voting in order not to be fined.

2.6 On 30 March and 25 April 2011, the author filed applications with the Australian Human Rights Commission, arguing that the fine that had been imposed on him for failure to vote and the enforcement of such a measure were discriminatory and constituted a violation of his rights under articles 17, 18, 19 and 26 of the Covenant.

2.7 On 17 April 2011, the author claimed before the Election Commission that his rights under articles 17, 18 and 19 of the Covenant had been violated. He argued that the Returning Officer's request to him to provide a reason for not voting was an arbitrary interference with his right to privacy and that the reasons he provided for not voting were based on his beliefs and opinions. He alleged that article 18 of the Covenant was not limited to religious beliefs; that his reasons for not voting should be considered to fall within the other beliefs protected by that article; and that the limitation on his right to manifest such beliefs could not be justified under article 18 (3) of the Covenant. Therefore, he requested that the Election Commission reimburse the fine paid by him and apologize.

2.8 On 4 May 2011, the Election Commission informed the author that it did not consider that the compulsory voting requirements contained in section 245 of the Commonwealth Electoral Act violated the rights guaranteed by the Covenant, which appeared as schedule 2 of the Australian Human Rights Commission Act 1986. The Election Commission referred to the High Court's jurisprudence on the concepts of religion and "religious duty" that would meet the requirements of section 245 (14) of the Commonwealth Electoral Act, and on the notion of a valid and sufficient reason for failing to vote in an election. The Election Commission concluded that his justification for not having voted did not disclose "some religious duty to fail to vote or … some actual religion or belief that is covered by article 18" of the Covenant. The Election Commission stated that it was bound by the requirements of the Privacy Act 1988, which were in accordance with article 17 of the Covenant.

2.9 On 9 May 2011, an official of the Human Rights Commission examined the author's application and stated that, although the Commission could consider claims of violations of human rights against the Commonwealth or its agents as defined in the Australian Human Rights Commission Act 1986, including violations of the rights guaranteed under Covenant, its power to investigate such claims was limited to considering claims that related to a discretion being exercised by a decision maker. As such, the Human Rights Commission was unable to investigate claims that related to acts or practices that arose owing to the automatic operation of legislation. In this connection, the Human Rights Commission stated that the Election Commission's decision to request the author to provide a reason for his failure to vote was in accordance with the Commonwealth Electoral Act; and that even if this decision was not in compliance with the Commonwealth Electoral Act, it was unclear whether his concerns would constitute an arbitrary interference with his right to privacy. It also held that his reasons for not voting, which were not accepted by the Election Commission, appeared to be an opinion and did not meet the definition of "belief" as intended by articles 18 and 26 of the Covenant.

2.10 On 18 and 20 July 2011, the author challenged the Human Rights Commission's decision before the Commission itself and asserted that article 18 of the Covenant also protected non-religious convictions. On 3 August 2011, a senior investigative officer of the Human Rights Commission stated that, as concerned his claim of arbitrary interference with privacy, it did not appear that the Election Commission's decision of seeking information from the author regarding his reasons for not voting was discretionary, but based on section 245 (5) of the Commonwealth Electoral Act; and that therefore under section 20 (2) (c) (ii) of the Human Rights Commission Act, the Human Rights Commission might decide not to inquire into this part of the complaint because it was considered misconceived. As regards his claim of violation of his freedom of thought, conscience, belief, opinion and expression, the Human Rights Commission found that the author failed to provide sufficient information to explain how the Election Commission's decision to send him a penalty notice contravened his rights to hold an opinion and/or belief. It stated that the requirement to participate in the voting process was separate to the requirement to express a preference

for candidates that a voter did not wish to vote for. Therefore, the author was invited to provide further information within 14 days.

2.11 On 9 August 2011, the author reiterated his previous allegations before the Human Rights Commission and clarified that he held the belief that: he should not vote; it was inappropriate for him to vote; he was duty bound not to vote as a consequence of his belief; and that the Election Commission had violated his human rights because it failed to treat his beliefs on an equal footing to the beliefs of other electors who had not been penalized pursuant to subsection 245 (14) of the Commonwealth Electoral Act.

2.12 On 30 September 2011, the Delegate of the President of the Human Rights Commission decided not to continue inquiring into the author's complaint since it was misconceived pursuant to section 20 (2) (c) (ii) of the Human Rights Commission Act. The Returning Officer, who had the discretion not to issue a penalty notice to electors who had failed to vote, could not disregard the intention to establish compulsory voting by means of the Commonwealth Electoral Act. Therefore, the Returning Officer was not able to exercise his or her discretion to not issue a penalty notice to electors who had failed to vote simply because they believed that they should not vote. In the Commission's decision, the author was informed that he could seek a review of its findings by the Federal Court of Australia or the Federal Magistrates Court (now Federal Circuit Court) under the Administrative Decisions (Judicial Review) Act 1997. Although the courts could not review the merits of the case they could refer the matter back to the Commission if they found that the Commission had been wrong on a point of law or had not exercised its powers properly.

2.13 On 11 December 2011, the author wrote to the Election Commission and reiterated that the penalty imposed on him constituted a violation of his rights under articles 17 and 18 of the Covenant.

2.14 On 18 January 2012, the Election Commission reiterated its claim that the author had admitted a breach of the compulsory voting requirements contained in section 245 of the Commonwealth Electoral Act, while rejecting that its action concerning that breach constituted a violation of the Covenant as embodied in the Australian Human Rights Commission Act. The Election Commission stated that the reason that the author had provided to the Returning Officer to justify not voting had not referred to an actual belief covered by article 18 of the Covenant. Therefore, the Election Commission rejected the author's request to refund the fine paid by him.

2.15 The author argues that Australian courts cannot examine the facts of his case and that the Human Rights Commission can only investigate complaints of breaches of the Covenant if such breaches are the result of a discretionary action of an officer and not the automatic application of the law. He thus argues that he has exhausted all domestic remedies in relation to the allegations contained in his communication.

The complaint

3.1 The author claims that the fine imposed on him by the Election Commission, due to his failure to vote at the 2010 federal elections, in application of the Commonwealth Electoral Act constitutes a violation by Australia of his rights under articles 17 and 18, read alone and in conjunction with articles 2 (2) and (3), 26 and 50 of the Covenant.

3.2 The author contends that the notice informing him of his apparent failure to vote gave him three options: to pay a fine, to go to court or to provide a justification to the Election Commission for not having voted. Since his reasons for abstaining to vote were his thoughts, beliefs and opinions, the notice compelled him to reveal them. However, his reasons are private and he should not be required to reveal them. Therefore, in practice, the notice constitutes an arbitrary interference with his privacy, in violation of article 17 of the Covenant.[1]

3.3 The author claims that the penalty notice violated his rights under article 18 of the Covenant by limiting his freedom to manifest his beliefs. Such a limitation cannot be justified under article 18 (3) of the Covenant. The author points out that although he

[1] See the Committee's general comment No. 16 (1988) on the right to privacy, para. 4.

explained to the Election Commission that his decision not to vote was based on his non-religious belief, the Election Commission considered that this was not a valid and sufficient reason. He further points out that article 18 of the Covenant protects the right not to profess any religion or belief;[2] and that, although his reasons for not voting can be perceived as an opinion, in his case, it was predominantly a manifestation of his belief driven by long-term non-religious convictions related to values such as honesty, accountability, legitimacy, decency and mutual obligations between electors and politicians.

3.4 The penalty notice by the Election Commission was also discriminatory on religious grounds. Although subsection 245 (14) of the Commonwealth Electoral Act does not limit the kind of beliefs that may constitute a valid reason for not voting, in practice the State party's electoral authorities have restricted it to certain beliefs. If the author had professed a particular religion or religious belief, he would not have been penalized. Therefore, in his case, the application of subsection 245 (14) was discriminatory under article 26 of the Covenant.

3.5 The author claims that: (a) the State party has failed to adopt the laws or other measures necessary to give effect to the rights recognized in the Covenant; (b) he did not have effective access to a remedy for the violations of his rights under articles 17 and 18 of the Covenant since the Human Rights Commission lacks jurisdiction to investigate claims of human rights violations that arise from the automatic enforcement of the law; and (c) both (a) and (b) constitute a violation of the State party's obligations under article 2 (2) and (3).

3.6 The author claims that similar compulsory voting legislation is enforced in the other States and territories of the State party, which constitutes a breach of its obligations under article 50 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 21 January and 3 October 2014, the State party submitted its observations on admissibility and the merits of the communication. It maintains that the author's claims under articles 2, 17, 18, 26 and 50 of the Covenant are inadmissible as they are incompatible with the Covenant and are not sufficiently substantiated. Should the Committee be of the view that any of the author's allegations are admissible, the State party maintains that they do not disclose a violation of the rights enshrined in the Covenant.

4.2 The State party's electoral system is based upon the democratic principle of universal adult suffrage, which is recognized in article 25 (b) of the Covenant. This system makes it compulsory for all Australian citizens who have attained the age of 18 to vote. Subsection 245 (1) of the Commonwealth Electoral Act states that "it shall be the duty of every elector to vote at each election", while subsection 245 (15) makes it "an offence if the elector fails to vote at an election". Subsection 245 (5) (c) enables a person to escape being penalized for not voting if they are able to demonstrate that they had a "valid and sufficient" reason to not vote. Anyone who is unable to provide a valid and sufficient reason for failure to vote at a federal election may pay a penalty of $A 20. If an elector who has failed to vote chooses not to pay this penalty, then the matter may be referred to a court, where a fine plus costs may be ordered on conviction. If a person chooses not to pay the court-ordered fine, the court will decide on a penalty.

4.3 All Australian states and territories have compulsory voting legislation. As voting is compulsory, electors are given a number of ways to cast their vote, including postal voting, voting at Australian overseas missions and in remote localities, as well as in person at a polling place in their district. In accordance with article 25 (b) of the Covenant, voting is conducted by secret ballot. Consequently, citizens are not compelled to vote. Instead, the duty of the voter is to attend a polling station, have their name marked off the certified list, receive a ballot paper and take it to an individual voting booth, mark it, fold the ballot paper and place it in the ballot box. Electors can therefore exercise their right to vote by submitting a blank or non-compliant ballot paper if they choose to do so.

[2] See the Committee's general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 2.

4.4 The State party points out that the Covenant does not impose any particular electoral system on State parties, provided that the system is compatible with the rights protected by article 25 and guarantees and gives effect to the free expression of the will of the electors.[3] In this regard, its system of compulsory voting represents international best practice and is the optimal way of giving effect to the free expression of Australian citizens. The State party claims that compulsory voting: (a) contributes to a system of representative democracy, in which its Constitution requires the Parliament to be made up of members directly chosen by the people; (b) maintains a high level of participation in elections (participation in Australian federal elections has never fallen below 90 per cent since compulsory voting was introduced in 1924); (c) encourages political parties to collectively appeal to and address the full spectrum of the electorate's values (it also enhances fundamental democratic values, including representativeness, political equality and the minimization of elite power); and (d) allows candidates to concentrate on campaigning on issues rather than also having to encourage voters to vote.

4.5 In the light of the foregoing, the State party maintains that electors are free to vote for any candidate or for no one at all without undue influence or coercion of any kind. Electors will only be liable for a penalty if they fail to submit a ballot paper using one of the available methods without a valid and sufficient reason for not voting. Hence, its system of compulsory voting fulfils the obligation enshrined in article 25 of the Covenant.

4.6 With regard to the author's claim under article 17 of the Covenant, the State party contends that it is inadmissible *ratione materiae* as there has been no interference with his privacy that would violate the rights guaranteed under this article. Furthermore, the author has not sufficiently substantiated the claim that the issuance of the notice advising him of his apparent failure to vote, or the request contained in the notice to provide reasons for not voting, constitutes an arbitrary interference with his privacy. The notice system was designed specifically to give recipients a range of options to resolve an apparent failure to vote. The author was under no obligation to respond to the notice as he could have chosen one of the other options. Should an explanation be provided, it is kept confidential by the Election Commission unless the reasons provided are not valid and sufficient and the matter proceeds to court.

4.7 Should the Committee find the author's claim under article 17 of the Covenant admissible, it should find that the claim does not disclose a violation of the Covenant. Firstly, the issuance and the content of the notice advising him of his apparent failure to vote were carried out by the Election Commission in accordance with the Commonwealth Electoral Act and are lawful for the purpose of the Covenant. Secondly, the notice and request for reasons cannot be considered arbitrary as these are reasonable, necessary and proportionate measures to achieve the aim of maintaining a compulsory voting system in Australia.[4] The State party points out that there is significant case law in Australian courts to guide the Election Commission in determining whether a non-voter has a valid and sufficient reason for failing to vote. These cases indicate that there is a wide range of valid and sufficient reasons for a person failing to vote, including sickness, natural events and accidents.[5] In this regard, the author has failed to demonstrate that the courts' interpretation of "valid and sufficient" under the Commonwealth Electoral Act is manifestly arbitrary or amounted to a denial of justice.[6]

4.8 The State party maintains that the author's claims under article 18 of the Covenant are inadmissible as they have not been sufficiently substantiated and/or are incompatible with the Covenant since his views in relation to the compulsory voting system do not constitute a belief for the purpose of article 18. The preparatory work of the Covenant

[3] See the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote, para. 21.

[4] See communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, para. 8.3.

[5] See *Judd v. McKeon* [1926] 38 *Commonwealth Law Reports* 380; *Lubcke v. Little* [1970] *Victorian Reports* 807; *Faderson v. Bridger* [1971] 126 *Commonwealth Law Reports* 271; and *O'Brien v. Warden* [1981] 37 *Australian Capital Territory Records* 13.

[6] See communications No. 1392/2005, *Lukyanchik v. Belarus*, Views adopted on 21 October 2009, para. 8.4; and No. 541/1993, *Simms v. Jamaica*, decision adopted on 3 April 1995, para. 6.2.

suggests that the term "belief" refers to belief systems, ideologies and philosophies of life, such as pacifism and atheism, rather than the limitless individual viewpoints on ideas and issues that could be reached for a variety of reasons.[7] The terms "religion" and "belief" are described in the preparatory work as including, in addition to various theistic creeds, such other beliefs as agnosticism, free thought, atheism and rationalism.[8] In the present case, the author's views in relation to compulsory voting are not a belief for the purpose of article 18 of the Covenant. His alleged belief is merely a viewpoint that he should not have to attend a polling place on election day and submit a ballot, and is not analogous to a belief system, such as pacifism or atheism. Therefore, his claim is inadmissible *ratione materiae*. In addition, the author has failed to prove that any limitation has been placed on his ability to form a viewpoint in relation to voting and/or that he has been coerced into changing his views.

4.9 Should the Committee find the author's claim under article 18 admissible, it should find that the claim does not disclose a violation of the Covenant, since the author has failed to show that the State party has placed any limitation on his ability to manifest his alleged belief or that he has been subject to any kind of coercion. The author was not required to submit a vote on election day, but merely required to attend a polling place and to receive and lodge a ballot paper to fulfil his obligations under the Commonwealth Electoral Act. He was at liberty to exercise his right to vote by submitting a blank or non-complaint ballot paper. The State party points out that the former European Commission on Human Rights found compulsory voting to be consistent with the right to freedom of thought, conscience and religion in the Convention for the Protection of Human Rights and Fundamental Freedoms.[9] In addition, the requirement that the author comply with the Commonwealth Electoral Act by participating in the State party's system of compulsory voting does not in any way amount to coercion for the purpose of article 18 (2) of the Covenant. This obligation does not compel the author to alter his views about candidates or compulsory voting, or impair his ability to form such views.

4.10 The author's claims under articles 2 (1) and 26 of the Covenant are inadmissible since they have not been sufficiently substantiated or are incompatible with the Covenant. In the absence of substantive violations of articles 17 and 18, the author's allegations of discrimination under article 2 (1) are inadmissible *ratione materiae* due to the accessory character of article 2. Furthermore, the author has failed to substantiate his allegations of discrimination under article 26 of the Covenant. Should the Committee find those allegations admissible, they do not reveal a violation of the Covenant. There has been no differential treatment in the author's case, as the Commonwealth Electoral Act requires all Australian electors to vote. The Commonwealth Electoral Act also provides an exception for persons who can provide a valid and sufficient reason for not voting, which applies to all voters, including the author. The fact that the Election Commission's decision was unfavourable to the author does not mean that he received differential treatment. On the other hand, the Election Commission's express recognition that people who have religious duty may have valid reasons not to vote constitutes legitimate differential treatment and does not constitute a breach of articles 2 (1) or 26 of the Covenant. In this sense, the meaning of "valid and sufficient reason" in subsection 245 (14) of the Commonwealth Electoral Act specifically recognizes the possible conflict between compulsory voting and religious duty. Moreover, providing an exception on the basis of religious duty is a proportionate response, based on reasonable and objective criteria, to the legitimate objective of allowing persons to manifest and practice their religion, and thus consistent with the State party's obligations under article 18 (1) of the Covenant.

4.11 The author's allegations of a violation of article 2 (2) and (3) are inadmissible as they are incompatible with the provisions of the Covenant. Those provisions do not

[7] See Marc Bossuyt, *Guide to the "travaux préparatoires" of the International Covenant on Civil and Political Rights* (Dordrecht, Martinus Nijhoff, 1987), p. 362.

[8] Ibid. See also communications No. 1155/2003, *Leirvåg et al. v. Norway*, Views adopted on 3 November 2004, para. 14.2; No. 878/1999, *Kang v. Republic of Korea*, Views adopted on 15 July 2003; No. 40/1978, *Hartikainen v. Finland*, Views adopted on 9 April 1981; and No. 224/1987, *A. and S.N. v. Norway*, decision adopted on 11 July 1988.

[9] See *X v. Austria* (application No. 4982/71), decision of 22 March 1972.

themselves confer any substantive rights, except in cases in which the Committee finds that there is a violation of another right of the Covenant. If the author is to argue that there has been a violation of his rights under article 2 (3), he must first provide sufficient evidence to substantiate his allegations that there has been a breach of his substantive rights under articles 17, 18 or 26, and then demonstrate that he did not have access to an effective remedy.

4.12 The State party maintains that the author's allegations of a violation of article 50 of the Covenant are inadmissible *ratione materiae* since they have not been sufficiently substantiated for the purpose of admissibility.[10]

Author's comments on the State party's observations on admissibility and the merits

5.1 The author submitted comments on the State party's observations in letters dated 31 March 2014, 10 and 17 November 2014 and 28 May 2015. He asserts that the State party did not provide any reasonable and objective justification for a distinction between his thoughts, belief and opinions and those of a similar nature held by other Australian citizens who had been exempted from the penalty for not voting. Accordingly, he has been subjected to discriminatory treatment regarding his rights under article 18, read in conjunction with article 2 (1) of the Covenant.

5.2 Concerning the State party's observation regarding article 25 of the Covenant, the author claims that the free expression of his will as an elector was to abstain from voting. The fact that he was issued with a penalty notice constituted an attack against the free expression of his political will and opinion. It also constituted discrimination, under article 25, in general, and 25 (b), in particular, because electors who are not penalized enjoy a greater protection of their rights than does the author.

5.3 Compulsory voting does not give effect to the rights of individuals to take part in the conduct of public affairs. As implemented in Australia, it cannot be argued to be necessary or even helpful in facilitating the right to vote. . Other democracies similar to Australia, such as Canada, Japan, New Zealand, the United Kingdom of Great Britain and Northern Ireland and the United States of America, do not have compulsory voting. In this regard, the State party failed to objectively explain how its compulsory voting system is better in any way.

5.4 The author submits that the State party's observations concerning its voting system and the duty of the voter imply that, in order to vote for no one at all, the voter must mark the ballot paper in an informal and unaccountable way. However, such informal voting has an ambiguous status in legal terms and the State party cannot expect a voter who wishes to choose not to vote to submit a marked but informal ballot paper to fulfil his or her duty to vote. Moreover electors who are exempted from voting under subsection 245 (14) of the Commonwealth Electoral Act do not need to consider or face such ambiguity and they do not need to turn up at a polling place if they do not wish to vote.

5.5 The author claims that the reason that he provided to the Election Commission to justify his abstention from voting reflects his free political opinion and will, which in his case is a belief.[11] In practice, the fine imposed on him is a compulsion, inducement or manipulative interference against him, in particular concerning future elections in which he will also be penalized for expressing his political will.[12]

5.6 The author reiterates that the notice advising him of his apparent failure to vote and, subsequently, the penalty notice, in practice, constituted an arbitrary interference with his privacy and are contrary to article 17 of the Covenant since he was compelled, under legal duress, to reveal his political opinion to the Election Commission in order not to be fined. His situation is materially identical to those who failed to vote due to religious reasons, and such failures are equally harmless to the public order, morals, safety and fundamental rights

[10] See communication No. 954/2000, *Mrugue v. Australia*, decision adopted on 2 November 2004, para. 6.9.

[11] See the Committee's general comment No. 25, paras. 3-4 and 6-7.

[12] Ibid., para. 14.

of others. Finally, it is for the electors themselves to determine individually the validity of their own electoral beliefs and opinions.

5.7 With regard to article 18 of the Covenant, the author reiterates his previous allegations and points out that the notice advising him of his apparent failure to vote compelled him to reveal his thoughts and belief in violation of the right enshrined in this provision.[13]

5.8 The author submits that should the reason he gave to the Election Commission to justify his failure to vote be deemed an "opinion", the penalty notice amounted to a violation of his right to hold an opinion without interference and intimidation.[14] The Election Commission's assessment of his reason to abstain from voting, in which it concluded that it was not a valid and sufficient reason to exempt him from his duty to vote, constituted, in practice, a form of coercion against his holding a particular political opinion.

5.9 Although the State party's observations maintain that electors are free to vote for any candidate for election or for no one at all, the official instructions established in section 240 of the Commonwealth Electoral Act instruct electors to place a preference by the names of all candidates. There is no optional preferential voting and no way to exclude from a ballot paper a vote for a candidate or candidates for whom a voter has no preference or does not wish to vote. Otherwise, the ballot paper will be set aside and will not be considered in the scrutiny. The author claims that this distorts and coerces the free expression of his will as elector and is contrary to article 25 of the Covenant.

5.10 The author reiterates his allegations concerning article 26 of the Covenant and asserts that the State party has not provided any objective and reasonable reason to explain the different treatment given to electors who provided a religious belief as grounds to excuse their failure to vote. Furthermore, it has not explained why his reason for not voting was not valid. Against this background, the Election Commission's penalty and subsequent decisions constituted discrimination on the grounds of his political opinions and his beliefs.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the claim is admissible under the Optional Protocol.

6.2 The Committee notes, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under any other procedure of international investigation or settlement.

6.3 The Committee notes that the author unsuccessfully filed applications before the Election Commission and the Human Rights Commission concerning the fine imposed on him by the former owing to his failure to vote at the 2010 federal elections; and his claim that he has exhausted all effective domestic remedies available in the State party in relation to the allegations contained in his communication. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee takes note of the author's allegations that the penalty imposed on him by the Election Commission violated his rights under article 18 of the Covenant since his decision not to vote in the 2010 federal elections was a manifestation of his belief driven by long-term non-religious convictions, and that such a belief can only be limited in the circumstances set forth in article 18 (3). The author further submits that should his reasons not to vote be considered an opinion and not a belief, the penalty notice amounted to a violation of his right to hold an opinion without interference and intimidation, and that the Election Commission's assessment of his reason to abstain from voting constituted a form of coercion against his political opinion. The Committee also notes the State party's

[13] See the Committee's general comment No. 22, para. 3.

[14] See the Committee's general comment No. 34 (2011) on liberty and security of person, paras. 9-10.

observations that the author's claim under article 18 is inadmissible as insufficiently substantiated or incompatible with the Covenant. In particular, the State party maintains that the author has failed to sufficiently substantiate his claim that he has been subjected to limitations on his ability to form a viewpoint in relation to voting, and/or that he has been coerced to change his views.

6.5 The Committee recalls that article 18 protects theistic, non-theistic and atheistic beliefs, and the right not to profess any religion or belief. The terms "belief" and "religion" are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.[15] Although the contents of a religion or belief should be defined by the worshippers themselves,[16] in general, beliefs are formed by a system of principles or philosophical consideration of life. The Committee acknowledges the author's points of view concerning the 2010 federal election (see para. 2.2 above) and the compulsory voting system in general. However, it considers that not all opinions or convictions constitute beliefs. In the present case, the author has failed to submit convincing arguments to show that his wish not to vote at the 2010 federal election was based on a belief in the sense of article 18 of the Covenant. As regards the author's right to hold an opinion under article 19 of the Covenant, the Committee considers that the purpose of the penalty imposed on the author was not to intimidate or punish him for holding a particular opinion regarding the behaviour of politicians, but to implement the general legal obligation of all electors to vote. In view of the foregoing, the Committee considers that the claims concerning the violation of articles 18 (1) and 19 (1) have not been sufficiently substantiated for the purposes of admissibility and are inadmissible under article 2 of the Optional Protocol. Having come to this conclusion, the Committee also considers that the author's claim regarding article 2 (3), read in conjunction with article 18 (1), is also inadmissible under article 2 of the Optional Protocol.

6.6 The Committee notes the author's allegations that, by concluding that his reason was not valid and sufficient to exempt him from a penalty under subsection 245 (14) of the Commonwealth Electoral Act, the Election Commission discriminated against him on the grounds of his political opinions and his beliefs, in violation of his rights under articles 26 and 18, read in conjunction with article 2 (1) of the Covenant, as compared with electors who abstained from voting at the 2010 federal election due to religious duty and were not penalized. The Committee also notes the State party's observations that these claims are inadmissible as insufficiently substantiated or incompatible with the Covenant. As the Committee has concluded that the author has not substantiated his claims regarding the violation of his rights under articles 18 (1) and 19 (1), as indicated above, the Committee considers that no issue of discrimination under article 26 arises in connection with the above-mentioned provisions. Furthermore, the author has not articulated a distinct ground on which he claims discrimination under article 26. The Committee therefore concludes that the author has failed to substantiate this allegation, and consequently declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.7 The Committee notes the author's allegations that the notice advising him of his apparent failure to vote and the subsequent procedure before the electoral authorities constituted an arbitrary interference with his privacy as enshrined in article 17 of the Covenant, since he felt forced to reveal his political opinions about the 2010 federal election in order to oppose the fine. However, the Committee also notes the author's allegations that the notice requested him to provide the Returning Officer with a valid and sufficient reason to justify his failure to vote in order not to be fined. In the Committee's view, the content of the notice cannot be interpreted as compelling the author to reveal his political opinions, but only an invitation to demonstrate whether he met the requirements of the law to obtain an exemption from voting. Accordingly, the Committee considers that the author has not substantiated his claim under article 17, read alone and in conjunction with article 2 (3) of the Covenant, and declares it inadmissible pursuant to article 2 of the Optional Protocol.

[15] See general comment No. 22, para. 2.

[16] See the interim report of the Special rapporteur on freedom of religion or belief (A/64/159), para. 31.

6.8 The Committee notes that the author also claims a violation of article 2 (2) of the Covenant in conjunction with his claims under articles 17 and 18. The Committee recalls its jurisprudence that article 2 (2) cannot be invoked in connection with a claim in a communication under the Optional Protocol, in conjunction with other provisions of the Covenant, except when the failure by the State party to observe its obligations under article 2 (2) is the proximate cause of a distinct violation of the Covenant directly affecting the individual claiming to be a victim.[17] In the present case, the Committee does not consider that an examination of whether the State party violated its general obligations under article 2 (2) of the Covenant to be distinct from an examination of the violation of the author's rights under articles 17 and 18 of the Covenant. The Committee therefore considers that the author's claims under articles 17 and 18, read in conjunction with article 2 (2), are incompatible with article 2 of the Covenant and inadmissible under article 3 of the Optional Protocol.

6.9 Concerning the author's claim under article 50 of the Covenant, the Committee recalls its jurisprudence in which it states that it is only with respect to the articles in part III of the Covenant, interpreted as appropriate in the light of the articles in parts I and II of the Covenant, that an individual communication may be presented to it. Accordingly, article 50 cannot give rise to a free-standing claim that is independent of a substantive violation of the Covenant.[18] Thus, the Committee finds this claim inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

6.10 The Committee takes note of the author's allegations that the compulsory voting system distorts and coerces the free expression of his will as an elector and is contrary to article 25 of the Covenant. While taking note of the State party's arguments in this respect, the Committee considers that the communication raises issues as to whether the sanction imposed on the author for not having participated in the 2010 federal elections constitutes a breach of his right under article 25 (b) of the Covenant. The Committee considers that the claim has been sufficiently substantiated, for the purpose of admissibility, and declares it admissible.

6.11 As all admissibility requirements have been met, the Committee declares the communication admissible insofar as it raises issues under article 25 (b) of the Covenant and proceeds with its consideration of the merits.

Consideration of merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's claims that the compulsory voting system and the fine imposed on him owing to his failure to vote distorts and coerces the free expression of his will as an elector, is a compulsion, inducement or interference against him in particular concerning future elections and is therefore contrary to article 25 of the Covenant. Furthermore, the author contends that compulsory voting does not give effect to the rights of individuals to take part in the conduct of public affairs. The Committee also takes note of the State party's arguments (see para. 4.4 above) that, inter alia, its electoral system is based upon the democratic principle of universal adult suffrage and in compliance with its obligations under the Covenant, the Covenant does not impose any particular electoral system and voters are free to vote for any candidate for election or for no one at all without undue influence or coercion of any kind.

7.3 The Committee observes that the author's claims under article 25, in particular about the coercive character of the fine imposed on him, ultimately questions the compatibility of the compulsory voting system in the State party, as applied to the author at the 2010 federal elections, with the Covenant. In this connection, the Committee recalls its general comment No. 25 to the effect that, although the Covenant does not impose any particular electoral

[17] See communications No. 2121/2011, *F.A.H. et al. v. Colombia*, decision adopted on 28 March 2017, para. 8.5; and No. 2030/2011, *Poliakov v. Belarus*, Views adopted on 17 July 2014, para. 7.4.

[18] See communication No. 954/2000, *Minogue v. Australia*, decision adopted on 2 November 2004, para. 6.9.

system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the elector.[19] It must guarantee, inter alia, that persons entitled to vote must be free to vote for any candidate for election and free to support or to oppose government,[20] and that the vote is secret.[21] The Committee therefore considers that a voting system must allow electors to vote for any candidate or none of them, including submitting a blank or non-complaint ballot paper, and ensure that voting is conducted by secret ballot. The Committee also considers that any sanction for the failure to vote must be established by law, reasonable and proportionate, and must not affect the enjoyment or exercise of the rights under the Covenant.

7.4 The Committee notes in this respect the State party's observations (see paras. 4.2 and 4.3 above) that within its compulsory voting system, electors are free to vote for any candidate for election or for no one at all, including casting a blank or non-compliant ballot paper, without undue influence or coercion of any kind, that voting is conducted by secret ballot and that electors will only be liable for a penalty of $A 20 if they fail to submit a ballot paper by one of the available methods without a valid and sufficient reason for not voting.

7.5 In the present case, the Committee observes that in order to fulfil his duty as an elector at the 2010 federal elections, the author was obliged to attend a polling place and place his vote in the ballot box according to the principle of a secret ballot. According to the author, should an elector wish to vote for none of the candidates, as in his case, the elector has to cast an informal vote, with an ambiguous legal status. However, the Committee observes that a blank vote is provided for in section 268 of the Commonwealth Electoral Act. It further observes that the author has not explained why a blank vote would not have genuinely reflected his will as an elector to support none of the candidates at the 2010 federal elections. Furthermore, the author has not provided convincing arguments to the Committee that the fine imposed on him was unreasonable or disproportionate. Accordingly, the Committee considers that the facts before it do not disclose a violation of article 25 (b) of the Covenant.

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not disclose a violation of the author's rights under the Covenant.

[19] See general comment No. 25, para. 21.

[20] Ibid., para. 19.

[21] Ibid., para. 20.

Annex

Individual opinion of Committee member Ahmed Amin Fathalla (dissenting)

1. Compulsory voting is contrary to States parties' obligations under articles 18 and 19 of the Covenant and constitutes a violation of the rights to freedom of thought, of expression and to hold an opinion.

2. The choice of a person not to vote at political elections is by itself a manifestation of his or her opinion on the issue put to the vote, and/or constitutes his or her opinion about the whole process of voting. In this regard, a blank vote cannot replace in any way the decision not to participate in a given election.

3. A compulsory voting system at political elections constitutes a coercion against the exercise and enjoyment of the rights enshrined in articles 18 and 19 of the Covenant, in particular when a fine is imposed on those that fail to vote. The issue of whether a fine is unreasonable or disproportionate is not relevant as the compulsory voting system as such is contrary to the Covenant. Fines for failure to vote should only be deemed as a punishment that aggravates the violations of these rights.

4. Therefore, I am of the view that the imposition of compulsory voting at political elections, as well as the fines imposed owing to the failure to vote, constitutes a violation of articles 18 and 19 of the Covenant.